

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ALPHONSE FRANKLIN,  
Plaintiff,

v.

SHERIFF GILLESPIE,  
Defendant.

Case No. 2:14-cv-1682-JAD-NJK

**Order**

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a county prisoner. On October 15, 2014, this Court issued an order noting that Plaintiff had not filed an application to proceed *in forma pauperis* and had not paid the full filing fee for this matter. (Doc. 2 at 1). The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400.00 no later than November 14, 2014. (*Id.* at 2). The deadline has now expired, and Plaintiff has not filed an application to proceed *in forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court

1 may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure  
2 to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52,  
3 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963  
4 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
5 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal  
6 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address);  
7 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to  
8 comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)  
9 (dismissal for lack of prosecution and failure to comply with local rules).

10 In determining whether to dismiss an action for lack of prosecution, failure to obey a  
11 court order, or failure to comply with local rules, the court must consider several factors: (1)  
12 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its  
13 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
14 cases on their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d  
15 at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-  
16 61; *Ghazali*, 46 F.3d at 53.

17 In the instant case, the Court finds that the first two factors, the public's interest in  
18 expeditiously resolving this litigation and the Court's interest in managing the docket, weigh  
19 in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
20 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in  
21 filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
22 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy favoring disposition of cases  
23 on their merits – is greatly outweighed by the factors in favor of dismissal discussed herein.  
24 Finally, a court's warning to a party that his failure to obey the court's order will result in  
25 dismissal satisfies the "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262;  
26 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's order requiring  
27 Plaintiff to file an application to proceed *in forma pauperis* or pay the full filing fee no later than  
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1 November 14, 2014, expressly stated: "IT IS FURTHER ORDERED that if Plaintiff does not  
2 timely comply with this order, dismissal of this action may result." (Doc. 2 at 2). Thus, Plaintiff  
3 had adequate warning that dismissal would result from his noncompliance with the Court's  
4 order to file an application to proceed *in forma pauperis* or pay the full filing fee by November  
5 14, 2014.

6 It is therefore ordered that this action is dismissed without prejudice based on Plaintiff's  
7 failure to file an application to proceed *in forma pauperis* or pay the full filing fee in compliance  
8 with this Court's October 15, 2014, order.

9 It is further ordered that the Clerk of Court shall enter judgment accordingly.

10 DATED this 19th day of November, 2014.

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13 Jennifer Dorsey  
14 United States District Judge  
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